

EXHIBIT 6

In The Matter Of:

MICROSOFT CORPORATION

v.

MOTOROLA INC., et al.

GREGORY LEONARD, Ph.D. - Vol. 1

June 24, 2013

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MERRILL CORPORATION

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1 they had to -- to make the offers, no. 09:38

2 Q. So let's leave aside every Motorola employee. 09:38

3 Do you think there were any employees that it was 09:38

4 incumbent on him to talk to before making the opening 09:38

5 offer? 09:38

6 A. You know, again, my -- my point is, you know, 09:38

7 did he have a duty. I don't know. It doesn't seem to 09:38

8 me that that's in the time frames that we're talking 09:39

9 about, the context we're talking about, that that's -- 09:39

10 and then for what we are talking about here, which is 09:39

11 this opening offer, which would be fully expected to be 09:39

12 the prelude to a -- a continued negotiation, I don't see 09:39

13 that there's a duty to do that at all. 09:39

14 Q. How do you know that he expected that to be a 09:39

15 prelude to further negotiations? 09:39

16 A. I talked to him and asked that very question. 09:39

17 And moreover I mean this is the person who was 09:39

18 responsible for negotiating many, many licenses with 09:39

19 many, many licensees and had -- this is the way these 09:39

20 negotiations went. 09:39

21 Q. Did he tell you that he had discussions with 09:39

22 lawyers before the letters were sent? 09:39

23 A. I mean my under -- I think my understanding was 09:39

24 that because Microsoft had sued Motorola, there were 09:39

25 discussions with lawyers. I don't know. But, again, 09:39

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1 with the content of those discussions was. 09:40

2 Q. One step at a time. 09:40

3 Did he tell you that he -- did he know that he 09:40

4 had conversations with lawyers before the offer letters 09:40

5 were sent? 09:40

6 A. I believe so, yes. 09:40

7 Q. Did you ask him what the strategy was that was 09:40

8 being devised in those conversations with the lawyers? 09:40

9 A. No. 09:40

10 Q. Do you think that might have been pertinent to 09:40

11 the question of whether he was acting in good faith? 09:40

12 A. Again, I've got to go on the evidence that I 09:40

13 have in -- in front of me. And that's what I have. 09:40

14 Q. Well, let's suppose he said to -- in the 09:40

15 conversations that he had with the lawyers, there were 09:40

16 discussions between Mr. Dailey and the lawyers to the 09:40

17 effect that they didn't expect Microsoft to accept these 09:40

18 offers and that these would allow Motorola, then, to 09:40

19 file lawsuits against Microsoft. Suppose that was the 09:40

20 substance of those conversations, do you think those 09:41

21 letters would have been sent in good faith then? 09:41

22 MR. CANNON: Object to the form of the 09:41

23 question. 09:41

24 THE WITNESS: I don't know. I don't have any 09:41

25 evidence that that's true. That's not something that 09:41

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1 I've -- I mean that's not the facts in front of me. So 09:41

2 I haven't looked at that. 09:41

3 I mean, you know, again, Motorola is engaged in 09:41

4 many, many of these negotiations. A lot of them started 09:41

5 in a very similar way, and they successfully negotiated 09:41

6 many, many licenses. 09:41

7 It's -- and talking to Mr. Dailey, there's no 09:41

8 reason to think that this ultimately wouldn't be the 09:41

9 same that -- his expectation was, that this would be the 09:41

10 same, you know, basic deal. 09:41

11 BY MR. PRITIKIN: Q. You don't know those 09:41

12 conversations didn't occur, do you? Because you don't 09:41

13 know what he discussed with the lawyers; isn't that 09:41

14 right? 09:41

15 A. That's true, I didn't ask, I mean, about 09:41

16 whether -- first of all, I didn't -- I don't know that 09:42

17 there were any discussions related to the letters. I 09:42

18 know that they were talking to the lawyers because 09:42

19 they's just been sued, and may have been just about the 09:42

20 Microsoft lawsuits themselves. 09:42

21 Q. Did you ask Mr. Dailey whether he talked to the 09:42

22 lawyers about the letters? 09:42

23 A. I didn't ask that specific question, no. 09:42

24 Q. You said there were other negotiations that 09:42

25 started in a similar way. Which? 09:42

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1	someone else?	10:24
2	A. I had the impression it was Mr. Dailey, but	10:24
3	I -- I'm not sure about that.	10:24
4	Q. I'm just trying to find out what you know.	10:24
5	A. Yeah. That's what I gave you.	10:25
6	Q. Now, at the time that the letters were sent --	10:25
7	and you understand the letters were sent on -- they're	10:25
8	dated October 21 and October 29, 2010?	10:25
9	A. Yes.	10:25
10	Q. And at the time the letters were sent, Motorola	10:25
11	was, in fact, planning a countersuit of its on its	10:25
12	standard-essential patents; was it not?	10:25
13	MR. CANNON: Object to the form of the	10:25
14	question.	10:25
15	THE WITNESS: I don't -- I don't specifically	10:25
16	know what its legal strategy was. I'm sure that they	10:25
17	haven't been sued by Microsoft. You certainly evaluate	10:25
18	your various legal options so it wouldn't surprise me.	10:25
19	But I'm not sure -- you know, I don't have the details	10:25
20	of their specific legal strategy.	10:25
21	BY MR. PRITIKIN: Q. So in the interview you	10:25
22	had with Mr. Dailey, that's not a question you asked	10:25
23	him. At the time you sent the letters, were you already	10:25
24	planning lawsuits on these patents? Did you ask him	10:26
25	that question?	10:26

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1 A. You mean -- well, I didn't ask him, but are you 10:26
2 saying -- I mean there is a difference between, you 10:26
3 know, planning with certainty to bring a lawsuit and, 10:26
4 you know, preparing for the eventuality that that might 10:26
5 happen. You know, the second thing is prudent, even if 10:26
6 you fully hope to negotiate an agreement. 10:26

7 Q. Did you ask him if they were planning a 10:26
8 lawsuit? 10:26

9 A. I don't think I asked it in that way. You 10:26
10 know, were you at that point where you definitely 10:26
11 planning bring a lawsuit, I certainly didn't ask that. 10:26

12 Q. Do you know who was involved in preparing the 10:26
13 October letters besides Mr. Dailey? 10:26

14 A. As I'm sitting here, I don't recall. You know, 10:26
15 there might have been details in the depositions, but I 10:27
16 don't recall what they were. If there -- if there were 10:27
17 such details. 10:27

18 Q. Were you aware Mr. Dailey signed the letters, 10:27
19 right? 10:27

20 A. Yes. 10:27

21 Q. And he's the only person you talked to? 10:27

22 A. Yeah. I mean it's his responsibility, 10:27
23 certainly. He's the leader of that part of the 10:27
24 organization. 10:27

25 Q. But there were numerous other people who had an 10:27

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1 we learn in the negotiation. It's hard to -- to say 11:43

2 that in advance before you know anything. 11:43

3 Q. Did you ask Dailey that question straight out, 11:43

4 how low were you willing to go as of October 2010? 11:43

5 A. I don't think I asked because, again, it seemed 11:43

6 to me it wasn't really relevant. It would depend on 11:43

7 what you learned in negotiation. I mean you would be 11:43

8 willing to go to zero if Microsoft came back and said, 11:43

9 you know what, we aren't actually using any of your 11:43

10 patents, if that turned out to be the case. 11:43

11 So, you know, until you know more, I think it's 11:43

12 pretty hard to -- to say -- to make an assessment like 11:43

13 that without it being, you know, not a very useful 11:43

14 statement. 11:43

15 Q. As of October 2010, did Motorola think that 11:43

16 Microsoft was using the H.264 and the 802.11 essential 11:44

17 patents? 11:44

18 A. Well, I think they had a reason to -- to think 11:44

19 that, which is why they initiated these -- when 11:44

20 Microsoft asked them for the patents, that's why they 11:44

21 talked about these patents in particular. But, you 11:44

22 know, I think one thing that came out at trial was that 11:44

23 Microsoft wasn't really using, at least very 11:44

24 extensively, the H.264 patents. So that was something 11:44

25 that, you know, the judge found very persuasive, and 11:44

1	A. Well, I think the letters themselves say that	14:05
2	they're -- that the offer is RAND. And, again, in	14:06
3	talking to Mr. Dailey, my -- I -- it sounds to me that	14:06
4	the -- my analysis leads to conclusion that, you know,	14:06
5	given the context of time pressure and everything else,	14:06
6	that this was kind of a central number that they -- they	14:06
7	went to. And in that context. And it was certainly not	14:06
8	based on the type of information that was available	14:06
9	ultimately in this case.	14:06

13	A. I guess that would even reinforce my point.	14:07
14	He's saying he thought it was RAND. And, you know,	14:07
15	obviously if you look at what the judge decided, the	14:07
16	judge decided that the right RAND rate was lower than	14:07
17	what -- what was in that initial offer. I mean that's	14:07
18	just one more reason that Motorola wasn't doing was bad	14:07
19	faith. It was just -- it's a disagreement about what	14:07
20	RAND was. But I think, you know, more the point, they	14:07
21	were in a rush. They're trying to get this letter out	14:07
22	and this was a natural thing for them to fall back on.	14:07

23	Q. Yeah. My question is a little more focused on	14:07
24	that. Which do you think it is, based on your	14:07
25	conversations with Mr. Dailey, that he didn't know what	14:07

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1 RAND was for these patents, and selected 2.25 percent 14:07
2 from the cellular licenses? Or he thought 2.25 percent 14:08
3 was about right for H.264 and 802.11? Which is it? 14:08
4 A. Well, I think it's -- I think what it was is 14:08
5 he, again, he fell back on that without -- because -- 14:08
6 from not having any experience with these patents in 14:08
7 particular on a standalone basis. And then given the 14:08
8 rest of the context. And I think when he said he 14:08
9 thought it was RAND, I think what he's saying is that he 14:08
10 felt as if he -- that that was consistent with his RAND 14:08
11 obligations. And I also know that, you know, he has 14:08
12 said he was certainly standing ready to negotiate 14:08
13 further. So I think he just viewed it as part of the -- 14:08
14 the process, and -- but I don't think he saying 14:08
15 necessarily the specific rate itself is RAND. But we 14:08
16 can look at his testimony and see. 14:08
17 Q. Did you ask him whether he thought the specific 14:08
18 rate was RAND? 14:08
19 A. I don't think I asked it that way. I asked 14:09
20 again, you know, the sequence of events and -- and what 14:09
21 happened and -- 14:09
22 Q. I want to be clear on the answer to this 14:09
23 question, sir. 14:09
24 Did you ask Mr. Dailey in the conversations you 14:09
25 had with him whether he thought 2.25 percent at the time 14:09

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1 was RAND for the 802.11 and the H.264 portfolios? 14:09

2 A. And I would say again, I think what he thought 14:09

3 was -- from what he told me was that in making this 14:09

4 offer, that that was consistent with the RAND 14:09

5 obligations. Again, I don't think it's necessarily the 14:09

6 case at that point in the negotiation. You can say with 14:09

7 absolute certainty that this number is absolutely RAND 14:09

8 because you don't have all the information that you need 14:09

9 to make that assessment at that time. 14:09

10 Q. Did you ask him whether that was a reasonable 14:09

11 royalty for the Motorola patents? 14:09

12 A. I don't think I asked him that specific 14:09

13 question. And, again, without having more information 14:09

14 of the type that was developed for this case, I'm not 14:10

15 really sure that -- that that's answerable at that point 14:10

16 in time. 14:10

17 Q. Do you think that the royalties they had gotten 14:10

18 for their cellular patents are relevant to knowing what 14:10

19 the H.264 and the 802.11 patents are worth? 14:10

20 A. Well, they're relevant again it provides -- 14:10

21 again, gives you a -- it's a default position to which 14:10

22 it's natural to turn. 14:10

23 Now, their cellular portfolio is different than 14:10

24 these other portfolios. You know, again, ultimately 14:10

25 that's something if a negotiation continued, there would 14:10

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I declare under penalty of perjury that the
foregoing is true and correct. Subscribed at
_____, California, this ____ day of
_____, 2013.

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I, Sheila Arceno, RPR, a Certified Shorthand
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That the foregoing witness was by me duly
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time and place therein set forth; that the testimony and
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later transcribed into typewriting under my direction;

That before completion of the deposition,
review of the transcript [] was [X] was not requested.
If requested, any changes made by the deponent (and
provided to the reporter) during the period allowed are
appended hereto.

I further certify that I am not of counsel or
attorney for either or any of the parties to the said
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Sheila Arceno, RPR
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